United Nations

AT

Administrative Tribunal

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26 July 2002

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1059

Case No. 1153: ALI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, First Vice-President, presiding; Mr. Kevin Haugh, Second Vice-President; Mr. Spyridon Flogaitis;

Whereas, on 30 March 2000, Ihmayed Ali, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 20 August 2000, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read as follows:

"SECTION II PLEAS

Applicant prays the Tribunal to order the following:

a. Rescission of the contested decision, reinstatement to the post, and the restoration of grade and other entitlement lost because of the contested decision.

b. Payment of compensation to be assessed by the Tribunal for injury sustained, including counsel[l]ing fees and secretarial expenses estimated at US$ 500"[.]

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2001 and periodically thereafter until 30 September 2001;

Whereas the Respondent filed his Answer on 30 September 2001;

Whereas the Applicant filed Written Observations on 30 January 2002;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 21 September 1983, as an Area staff member with a temporary indefinite appointment as Senior Vocational Instructor (Electrical), at the Grade 10 level, at Damascus Vocational Training Centre. Effective 11 March 1997, the Applicant was reassigned to the post of Principal, Siblin Training Centre, Lebanon.

On 15 January 1999, the Applicant wrote to the Chief, Field Education Programme, Lebanon, (the Chief) informing her that beginning 1 February 1999, five short-term courses would be offered at Siblin Training Centre, three of which would be conducted after duty hours. In a letter dated 2 February, the Applicant recommended to the Chief that a "supervisory allowance" in the sum of US$ 400 be paid to three persons, including himself, for supervising the courses conducted after duty hours. On 3 February, the Field Personnel Officer approved the retention of three instructors for teaching these three courses. Shortly thereafter, all five courses commenced: each course was conducted during duty hours. On 20 February, the Applicant informed the Chief of the commencement of the courses, without mentioning the change in the scheduling of the three courses originally to be held after duty hours. He included a "Request for Extra Budget Funds" to cover payment to instructors stated to be teaching the three courses after duty hours.

On 11 March 1999, the Chief informed the Field Administration Officer, Lebanon, (FAO) that she had discovered that the three courses supposedly held after duty hours were, in fact, being held during duty hours and that she considered that the Applicant was "abusing the available financial resources". Consequently, she recommended the Applicant be served with a letter of censure. On 12 March, the Chief asked the Applicant for an explanation of his deviation

from the approved proposal. The Applicant responded on 22 March, explaining the reasons for the change in plans while adding that his failure to consult with the Chief was due to the pressure of work.

On 22 March 1999, the FAO wrote to the Chief, indicating that the Applicant's "Request for Extra Budget Funds" was fraudulent and recommending that he be demoted. On 25 March, the FAO and the Chief wrote to the Director of UNRWA Affairs, Lebanon, informing him of the Applicant's conduct, characterizing it as "a clear act of fraud" and recommending that he be demoted to the post of Deputy Principal, Siblin Training Centre. The Director of UNRWA Affairs, Lebanon, approved the recommendation on the same day. The Applicant was informed of this decision on 26 March.

On 24 April 1999, the Applicant wrote to the Director of UNRWA Affairs, Lebanon, requesting administrative review of this decision. On 6 May, the Director of UNRWA Affairs, Lebanon, replied that this decision would be maintained.

On 30 May 1999, the Applicant lodged an appeal with the Area Staff Joint Appeals Board (JAB). The JAB adopted its report on 15 November 1999. Its evaluation and judgement, and recommendation, read, in part, as follows:

"III. EVALUATION AND JUDGMENT

...

a) The Board noted that it is true that the [Applicant] decided to hold the 3 short-term courses after duty hours but when he discovered that it was very difficult and for the sake of trainees and instructors he rescheduled them during duty hours. ...

Moreover the Board would like to point out that the [Applicant] is in a senior position and to take a decision like rescheduling of the short-term courses without consulting his supervisor doesn't need such a measure as demotion ...

b) The Board also noted that the request for extra budget for the teaching staff was made in accordance with his decision to reschedule the short-term courses and therefor[e] not for his own benefit ...

...

d) ... [T]he Board is of the opinion that a demotion is a harsh decision and a letter of censure would be a more appropriate measure ...

Moreover, the Board noted that the [Applicant's] post had been advertised, and would like to point out that the appointment to this post be delayed until a final decision is reached.

IV. RECOMMENDATION

28. ... the Board unanimously makes its recommendation ... that the Administration's decision appealed against be reviewed."

On 17 December 1999, the Commissioner-General, UNRWA, transmitted a copy of the JAB report to the Applicant and informed the latter that he "d[id] not agree with the [JAB's] opinion that '*a demotion is a harsh measure*' and a letter of censure would have been more appropriate" and had decided to reject the JAB's recommendation and to dismiss the appeal.

On 20 August 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant's rights of due process were violated.

2. The Respondent did not meet his burden of proof in the disciplinary proceedings.

3. The Applicant had no intention of abusing Agency funds and his "Request for Extra Budget Funds" did not include a supervisory allowance for himself.

4. The scheduling of courses fell within the Applicant's discretional authority.

5. The penalty was disproportionate.

Whereas the Respondent's principal contentions are:

1. The Applicant's conduct justified the disciplinary action taken and demotion was appropriate in the circumstances.

2. The Applicant actively misled the Chief, which could have resulted in negative financial consequences for the Agency.

3. There is no basis for finding an implied withdrawal of the Applicant's request for supervisory allowances.

The Tribunal, having deliberated from 4 to 26 July 2002, now pronounces the following Judgement:

I. The Applicant submits that neither fraud nor attempted fraud can be found against him as:

(a) He states that the figure sought by his successor as additional funds for the short term courses (recalculated on the basis that they would take place in ordinary duty hours) in fact exceeded the amount sought by the Applicant in his "Request for Extra Budget Funds" ("Request") of 20 February 1999, arguing that in the circumstances the Applicant's misleading letter of 20 February 1999 to the Chief and the equally misleading "Request" attached thereto should not be construed as fraudulent but rather as establishing that the Applicant was intent in saving the Agency's money rather than abusing its funds.

(b) That he never actually submitted a "Request" seeking the release of payment for supervisors (including himself) for which he had sought approval, so that he had not engaged in any attempt to procure money for his own benefit.

II. It is appropriate at this stage to summarise the misconduct or unsatisfactory conduct which had been alleged against the Applicant and the findings which the Respondent had relied upon when deciding that he should be demoted and downgraded. Those allegations and findings may be summarised as follows:

(a) Causing or allowing the Administration to believe that the three classes were actually being run in the afternoons (outside ordinary duty hours) as per the Applicant's original proposal, for which permission had been granted, when, in fact, from the time of their commencement they were carried on inside ordinary duty hours by a totally different number of teachers than had been envisaged and for which approval had been granted.

(b) That the letter to the Chief of 20 February 1999 and the attached "Request" were wilfully or deliberately misleading for they referred to the initial request as made by the Applicant, and subsequently approved, and also referred specifically to the three nominated teachers, so that in all of the circumstances the Applicant intended *inter alia* to cause the authorities to believe that the

classes were being conducted as originally envisaged and approved (with three teachers, outside ordinary duty hours rather than with eleven teachers and within ordinary duty hours).

(c) Recommended payment of supervisory allowances to both himself and two others on the stated basis that the classes would be held outside ordinary duty hours and having changed the basis for those payments did not inform the Administration of that change.

III. It appears to the Tribunal that the JAB misconstrued or failed to identify the real issues or the nature of the allegations which had in fact been made against the Applicant and which were essentially that he had deliberately misled both the Education and the Administrative Departments. Rather, the JAB dealt with the appeal as if the Applicant had merely faced an allegation of having rescheduled the three classes in question so that they were now taking place within ordinary duty hours, rather than outside ordinary duty hours (and with eleven teachers rather than with three) and on the basis or the assumption that the "Request" had been made "in accordance with his decision to reschedule the short-term courses and therefore was not for his own benefit". The JAB, in effect, found that there had been valid reasons for the Applicant to have rescheduled the courses (a decision which the Respondent had never put in issue) and that, having regard to the seniority of his position, the Applicant's decision to reschedule, without consulting with his superiors, did not merit his demotion. Here again it should be emphasised that no such allegation or finding had been relied upon as grounds for his demotion or downgrading.

It is here worth quoting in some detail from the letter sent by the Commissioner-General, UNRWA, to the Applicant on 17 December 1999, written after the Respondent had considered the findings of the JAB and in which he set out the grounds upon which he rejected the recommendations of the JAB. In his said letter, the Respondent stated:

> "I agree with the Board's finding that the mere rescheduling of short-term courses without consulting your supervisor does not deserve a measure such as demotion. However, the rescheduling of the courses cannot be viewed in isolation from your recommendation for supervisory allowances six days before the rescheduling of the courses and your request for remuneration of three teachers and for additional budget allocation *after* the rescheduling of the courses. You recommended supervisory allowances for yourself and two others on the basis that short-term courses were being held after duty hours but later you did not inform the Agency, after having rescheduled the courses to be held within duty hours, that they had been so rescheduled. In addition,

you requested additional budget allocation for three teachers on the basis that they conducted short-term courses after duty hours. The Agency would not pay a supervisory allowance in the amount recommended and would not pay the remuneration for the teachers in the amount requested if it knew the courses were held within duty hours. Thus, with regard to your recommendation of supervisory allowances, you appear to have attempted to obtain a personal financial benefit. With regard to your request for additional budget allocation, you exposed the Agency to possible expenditure of funds for which there was no basis.

The Board also noted that your request for additional budget allocation for the teaching staff was made in accordance with your decision to reschedule the short-term courses and therefore not for your benefit. The Board seems to suggest that your request for additional budget allocation for teaching staff had been made on the basis that all short-term courses were taking place during duty hours. This is incorrect. In your request for additional budget allocation you only referred to teaching staff costs for three short-term courses. Previously, you had suggested and the Administration had approved three teachers to conduct three short-term courses after duty hours. Thus, the request for additional budget allocation could only be understood to refer to teaching staff costs arising out of conducting three courses after duty hours. The decision to request additional budget allocation for the three teachers might not have been for your own benefit but this decision was without proper justification and potentially exposed the Agency to higher expenditure of funds."

IV. Whilst the Applicant has proffered such excuses as "forgetting through oversight" and "inability due to work pressure" for his failure to have informed the Chief of the rescheduling so that the classes were now to be conducted during duty hours rather than outside duty hours, he has never advanced anything which the Tribunal could consider to be an explanation or excuse for the grossly misleading nature of his letter of 20 February 1999 or for the "Request" which was attached thereto. The Tribunal is satisfied that it was the clear intent of those documents to cause the authorities to believe that the courses, as originally envisaged by the Applicant and for which approval had been forthcoming, had been conducted by three teachers outside office hours from 8 February 1999. In all of the circumstances the Tribunal is satisfied that there was ample evidence such as entitled the Respondent to conclude that the Applicant had wilfully sought to deceive in the manner identified by the Respondent in his above-quoted letter of 17 December 1999, and that by those actions he was guilty of unsatisfactory conduct which fully merited the disciplinary measures which were taken against him.

V. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Julio BARBOZA
First Vice-President, presiding

Kevin HAUGH
Second Vice-President

Spyridon FLOGAITIS
Member

Geneva, 26 July 2002

Maritza Struyvenberg
Executive Secretary